

REMARKS/ARGUMENTS

Applicants hereby elect to prosecute the invention of Group II, claims 13-42, identified in the Office Action of May 05, 2005. However, Applicants traverse the restriction requirement and request withdrawal of the same. A restriction requirement is only proper where "two or more independent and distinct inventions are claimed in one application" 35 USC 121. Although Applicants agree that the inventions of Group I and II are patentable distinct, the inventions are not independent from each other. Examples of independent inventions would be an internal combustion engine and a football. An internal combustion engine and a football are not related in any manner and therefore are independent. In contrast, Applications claimed inventions are related in that one invention includes fluid flow plates and the other invention includes an electrochemical device that may include the fluid flow plates.

Applicants' two inventions were properly included in one application because the inventions are related, and to meet other statutory requirements such as describing the best mode of making and using the invention. Both 35 USC 121 and 37 CFR 1.141-1.146 require that two or more inventions must be both independent and distinct in order for a restriction requirement to be proper. There is no legal authority in statute or code to support the USPTO policy of making a restriction requirement based solely on distinctiveness. Applicants' respectfully request the Examiner to provide legal authority (Not the MPEP) to support the position that a restriction requirement may be based solely on distinctiveness, or withdraw the restriction requirement.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Cary W. Brooks', written in a cursive style.

Cary W. Brooks

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